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BROOKS KUSHMAN P.C.
1000 TOWN CENTER
TWENTY-SECOND FLOOR
SOUTHFIELD, MI 48075

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/737,371
Filing Date: December 15, 2000
Appellant(s): HERTZ ET AL.

John R. Buser

For Appellant

Supplemental
EXAMINER'S ANSWER

This answer is in response to the supplemental appeal brief filed March 14th 2007. The Evidence Relied upon section in the Examiner's answer has been updated in accordance with a request from Appeal specialist. The supplemental appeal brief was submitted with corrections to form of the Status of the claims and the Summary of Claimed Subject Matter required by a notice from the office. Both the Brief and Examiner answer are believed to be in compliance with form and ready to be considered by the Board.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

No evidence other than the already cited prior art is relied upon by the examiner in the rejection of the claims under appeal.

The references relied on are as follows:

U.S. Patent 6,571,271 to Savitsky

U.S. Patent 6,480,627 to Mathias et al.

U.S. Patent 6,337,712 to Shiota

U.S. Patent 6,968,366 to Zhang et al.

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

A. Claims 1-8, 10, 15-19 and 21-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 6,571,271 to Savitzky et al. in view of U.S. Patent 6,480,627 to Mathias et al.

B. Claims 9, 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of U.S. Patent 6,571,271 to Savitzky et al. and U.S. Patent 6,480,627 to Mathias et al. in view of U.S. Patent No. 6,337,712 to Shiota.

C. Claims 24-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of U.S. Patents 6,571,271 to Savitzky et al. and 6,480,627 to Mathias et al. and further in view of 6,968,366 to Zhang et al.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

A. Claims 1-8, 10, 15-19 and 21-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 6,571,271 to Savitzky et al. in view of U.S. Patent 6,480,627 to Mathias et al.

With regard to claim 1, Savitzky discloses a system for distributing digital images to a user. Savitzky discloses the system comprising an image capture device (Fig.1, element 116) for creating digital images wherein the digital images include metadata containing information about the digital images (column1, lines 45-51). Here metadata is interpreted as "camera ID, date of capture, and the like."

Savitzky further discloses at least one image server (Fig.1, 100) in communication with the image capture device, the image server receiving and storing digital images transmitted from the image capture device (column 4, lines 1-2).

Savitzky further discloses at least one programmable software agent in communication with the at least one image server (creation of HTML pages, column 2, lines 63-65) the at least one software agent including at least one set of user-specified criteria for selecting image, the at least one set of user-specified criteria including a desired source of the digital images, wherein for each set of user-specified criteria the software agent automatically compares the user specified criteria with the metadata of digital images (column 1, lines 43-63). Savitsky discloses where image metadata stored with the image at time of capture includes camera ID, which is interpreted as an image source. Also in the summary Savitsky discloses that the images may be searched by a user and that the images are searchable by text such as captions or titles or by image features. This is interpreted to include the source or camera ID as suggested by being included in the metadata.

The reasoned statement presented above in response to Applicants remarks is provided here for clarity:

Let it be clear that no hindsight is needed to assume that camera ID information saved as metadata is also utilized as user-specified criteria for searching and selecting digital images. Savitsky discloses multiple source information saved as metadata. In addition to camera ID, Savitsky also discloses kiosk source information, time of day source information (a date or time is also considered a source of WHEN an image is captured), and a GPS camera position source information. The only sight used to interpret the searching of Savitsky as being enabled to search on source information is the knowledge of one of ordinary skill in the art, that such information is only captured

for use in a database so that such information may be later accessed (i.e. searched, requested, distributed) according to such information. It is clear that the reference to Savitsky performs searching of an image database that is **“searchable by text (i.e. from the captions or titles) or by image features.”** Savitsky also determines multiple types of source information that is added to the image files. The source information is interpreted as both the searchable text and as image features. Therefore even if cannot be agreed as to whether or not the user's of Savitsky's invention are definitely performing their searches using the source information that Savitsky has explicitly disclosed, it must be agreed upon that that it would have been obvious to one of ordinary skill in the art at the time of invention to perform a search on the data by a user using search information, because Savitsky has explicitly disclosed allowing searching of image text and image features and has explicitly disclosed that metadata (image text or image features assigned to the images definitely includes source information. Therefore anyone of ordinary skill in the art would understand that searching such a database according to information in the database is enabled and motivated for the same reasons that any database is accessed, to find that which is organized and doing so according to its organization.

Furthermore it is gathered from Applicant's specification that source is just one kind of metadata that can be used to evaluate and select images. Applicant states: “For example, metadata can include the source, date and/or description of the photograph...” (specification p. 6, lines 23-25). Applicant further illustrates in the specification in Fig. 4 that source includes that source can be interpreted as photographer or even description

of who is in the image listed along side content and captions for evaluating the images to be selected. When Applicant's disclosure is viewed in this light, it is apparent that "source" is just one of several types of well-known metadata that may be searched.

Now referring to the reference of Savitsky, it is disclosed plainly in that "The image server then automatically detects the image storage device and downloads the image stored thereon, adding various data elements, such as camera ID, date of capture, and the like" (column 1, lines 47-51). HTML pages are then generated and made available to web browsers and are presented with optional captions and titles. Savitsky further discloses "In a specific embodiment of an image server, the images stored thereon are also searchable by text (i.e., from the captions or titles) or by image features" (column 1, lines 57-59). Savitsky clearly teaches that different kinds of metadata (text, captions, titles, image features) are used to search or request images. It should be further noted that the text of captions or titles are only two examples given indicating that there are clearly more options for searching using the metadata of the images. Savitsky also teaches that the images when uploaded to the server environment from the image capture device are assigned all kinds of metadata including camera ID, date of capture, and the like (column 1, lines 48-50) and card identifier, camera identifier, time of day, location of kiosk, and even GPS data (column 4, lines 7-20). Any of these identifiers are interpreted as a source because the only narrowing details of exactly what Applicant defines as a source are found in Fig. 4, where it can be gathered from the Fig. 4 that source either means a photographer or user, or a person in the photo. So Savitzky clearly and undeniably teaches that metadata is used to

evaluate and select images. Savitsky clearly and undeniably teaches that the images search contain source metadata. It would be reasonable to anyone of any skill in the art that these image data files are evaluated and selected according to their metadata. When metadata such as the multiple forms of source data is disclosed in Savitsky, and when Savitsky says "the image stored thereon are also searchable by text (i.e., from the captions or titles) or by image features." Anyone regardless of skill in the art would logically conclude that the source data disclosed in Savitzky qualifies as metadata and "image features" that may be searched in the database disclosed.

Savitsky further discloses automatically evaluating and selecting a subset of digital images (column 1, lines 51-56). Here it is understood that there must be a software agent used to display the images on an HTML page. Savitzky does not disclose the at least one software agent compares user-specified criteria with the metadata of digital images available at the image server during a first time period evaluate and select digital images from a desired source for distribution to the user, the at least one software agent automatically comparing the user-specified criteria with the metadata of additional digital images not available during the first time period whenever the additional digital images are made available at the image server.

The reference to Mathias was cited to teach the feature of a "standing order" wherein the operation of searching and retrieving images meeting a certain criteria repeatedly and automatically overtime (column 9, lines 41-51). Mathias teaches that in the image classifier, the system can automatically and repeatedly search for images and return images that meet a certain criteria such as cars the user is known to like. In

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this way the user may be updated continuously each time a new image of interest is found. This inherently happens over a first period and then over another period when new images are available and inherently uses some form of metadata. Therefore it would have been obvious to one of ordinary skill in the art at the time of invention to use the method of Mathias to continually search and update a user when an image of interest is found with the image retrieval system of Savitzky and to do so using metadata such as the desired source of the image (camera ID) and any searchable metadata in order to continually update a user when an image of interest is found in order to continually update a user when an image of interest is found. Both of these practices are well known in the art as shown here.

With regard to claim 2, Savitzky discloses the system wherein the at least one software agent is operable to monitor the at least one image server for digital images (column 1, lines 50-55). Here the image server recognizes new images and creates or modifies HTML pages. The server does this automatically and must require a "software agent."

With regard to claim 3, Savitzky discloses the system wherein the at least one image server is operable to push digital images to the at least one software agent (column 2 lines 60-65). Here the server presents the images as HTML pages with the help of the software agent.

With regard to claim 4, Savitzky discloses the system further including at least one display device for displaying the digital images selected by the at least one software agent (column 1, lines 50-55). Here the images are chosen by a software agent and displayed in the form of HTML pages. The display device would be some form of computer monitor.

With regard to claim 5, Savitzky discloses the system wherein the at least one software agent is associated with the at least one display device (column 2, lines 63-65). Here the HTML pages are associated with the web page displayed on some type of digital screen or monitor.

With regard to claim 6, Savitzky discloses the system further including a central processor in communication with the at least one display device (column 2 lines 60-65). Here it is understood that the central processor will be a computer and the display device will be that computer's monitor.

With regard to claim 7, Savitzky discloses the system wherein the at least one software agent is associated with the central processor (column 2 lines 60-65). It is inherent that a software agent must be associated with a central processor.

With regard to claim 8, Savitzky discloses the system wherein the central processor includes a plurality of programmable software agents corresponding to each

of the display devices (column 2 lines 60-65). A number of different programmable software agents must be used to make HTML pages available to be seen on several different display devices.

With regard to claim 10, Savitzky discloses the system wherein the at least one software agent and the at least one image server are in connection via a broadband network (column 4, lines 1-4). Here it is understood that the Internet contains broadband networks. It is inherent that two devices in connection through the Internet would be in connection through a broadband network.

With regard to claim 15, the discussion of claim 1 applies. The method claimed is considered to be included in the system previously discussed.

With regard to claim 16, Savitzky discloses the method further including displaying the digital images selected by the at least one software agent (column 2, lines 61-64). Here clients are requesting certain pictures through a network interface, which must have a software agent to select the images to be displayed.

With regard to claim 17, Savitzky discloses the method further including creating the digital images using the image capture device (column 1, lines 43-45). It is inherent that the image capture device is used to create images.

With regard to claim 18, Savitzky discloses the method further including monitoring the at least one image server for digital images using the at least one software agent (column 2, lines 51-55).

With regard to claim 19, Savitzky discloses the method further including pushing digital images from the at least one image server to the at least one software agent (column 2, lines 61-64).

With regard to claim 21, the discussion of claim 1 applies.

With regard to claim 22, Mathias discloses the programmable software agent according to claim 21, wherein the software agent is operable to monitor the at least one image server for digital images (column 9, lines 47-51).

With regard to claim 23, Mathias discloses the programmable software agent according to claim 21, wherein the at least one image server is operable to push digital images to the software agent (column 9, lines 47-51).

B. Claims 9, 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of U.S. Patent 6,571,271 to Savitzky et al. and U.S. Patent 6,480,627 to Mathias et al. in view of U.S. Patent No. 6,337,712 to Shiota.

With regard to claim 9, Savitzky and Mathias disclose the system according to claim 4. They do not specify the use of the system wherein the at least one display device is connected to a home network. Shiota discloses a device similar to the claimed invention and also allows for a connection with a general household office (Fig. 3, 11). Therefore it would have been obvious to one of ordinary skill in the art at the time of invention to utilize a connection with a home network for the reason of using the device to transfer and display images from home.

With regard to claim 11, Savitzky and Mathias disclose the system according to claim 1. Savitzky and Mathias do not allow for a wireless communication link between the image capture device and the image server. Shiota discloses a device very similar to the claimed invention and also allows for a wireless communication link (Fig.3, 5) between the server (Fig.3, 6) and the image capture device (Fig.3, 1). Shiota teaches that a wireless link is useful because "a user of a digital camera can transfer images, via this system while the user is away from home, thereby enabling continual use of the digital camera." See abstract last three lines. Therefore it would have been obvious to one of ordinary skill in the art at the time of invention to utilize a wireless communication link to facilitate transfer of digital images while the user is away from home.

With regard to claim 12, Savitzky and Mathias disclose the system according to claim 1. Savitzky and Mathias do not allow for communication between the image

capture device and image server via a synchronization cradle. Shiota discloses a device very similar to the claimed invention and also allows for a synchronization cradle or docking station (4). The docking station is another way to transfer images from the camera to the server. Using a cradle, image transfer can be done without removing a memory card or storage device from the camera. Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to utilize a synchronization cradle or docking station as taught by Shiota in the device of Savitzky to transfer images from camera to server quickly and easily..

C. Claims 24-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of U.S. Patents 6,571,271 to Savitzky et al. and 6,480,627 to Mathias et al. and further in view of 6,968,366 to Zhang et al.

The combination of Savitzky and Mathias discloses the invention of claims 1, 15 and 21, but does not disclose the inclusion of audio and video. Zhang discloses a rich media searchable database directory for use with the Internet (Fig. 1, element 40 and column 2, lines 32-67). Zhang teaches that this embodiment enables users to search multimedia content using a number of different criteria and that the database can also be managed in a number of different ways. Therefore it would have been obvious to one of ordinary skill in the art at the time of invention to use the rich media searchable database of Zhang with the image database search and delivery methods of Savitzky and Mathias in order to enable searching audio and video information as well.

(10) Response to Argument

Summary of Appellant's Argument:

Regarding the 103 rejection of claim 1, Appellant alleges that the reference to Savitsky fails to disclose the passage of the claim that recites that the software agent includes "*at least one set of user-specified criteria for selecting digital images, the at least one set of user-specified criteria including a desired source of the digital images, wherein for each set of user-specified criteria with the metadata of digital images available at the server.*" Claims 15 and 21 recite similar language.

More specifically, Appellant argues that although Savitsky teaches using user-specified search data for selecting images, Savitsky fails to teach that the user-specified criteria used to select images specifically includes source information.

Background Discussion of Image Metadata in the Art

Metadata in image processing is generally any image data used to describe the image in an image file. Examples of metadata include file size, captions, titles, file type, camera ID, and capture date are all examples of metadata. Metadata is basically any data used to describe the file. Metadata is exceedingly well known and commonly used in the art to organize collections of image files. It is well known in the computer arts that databases of files are arranged according to the respective metadata of the files.

Appellant's Claim and Specification Disclosure

Appellants claim recites using *"user-specified criteria for selecting digital images, the at least one set of user-specified criteria including a desired source of the digital images, wherein for each set of user-specified criteria the at least one software agent automatically compares user-specified criteria with the metadata of digital images available at the image server."*

So what is essentially claimed is allowing a user to specify metadata criteria for selecting certain images according to the metadata assigned to those images with specific focus on the metadata including desired source data. Appellant argues that Savitzky does not teach selecting images according to source metadata. Appellant insists that Savitzky does not implicitly disclose selecting metadata according to source metadata.

For explanation of why desired source metadata is the preferred and unique type of metadata to be searched one must look to Appellant's specification.

The first time the term "source" appears is on page 5, lines 21 and 22:

"Software agents used programming criteria, such as the photograph source or type to evaluate and select digital images."

The term "source" appears again on page 6, lines 21-25:

"In a preferred embodiment digital images 42 include "metadata" 44, or information about the digital images 42. For example, metadata can include the

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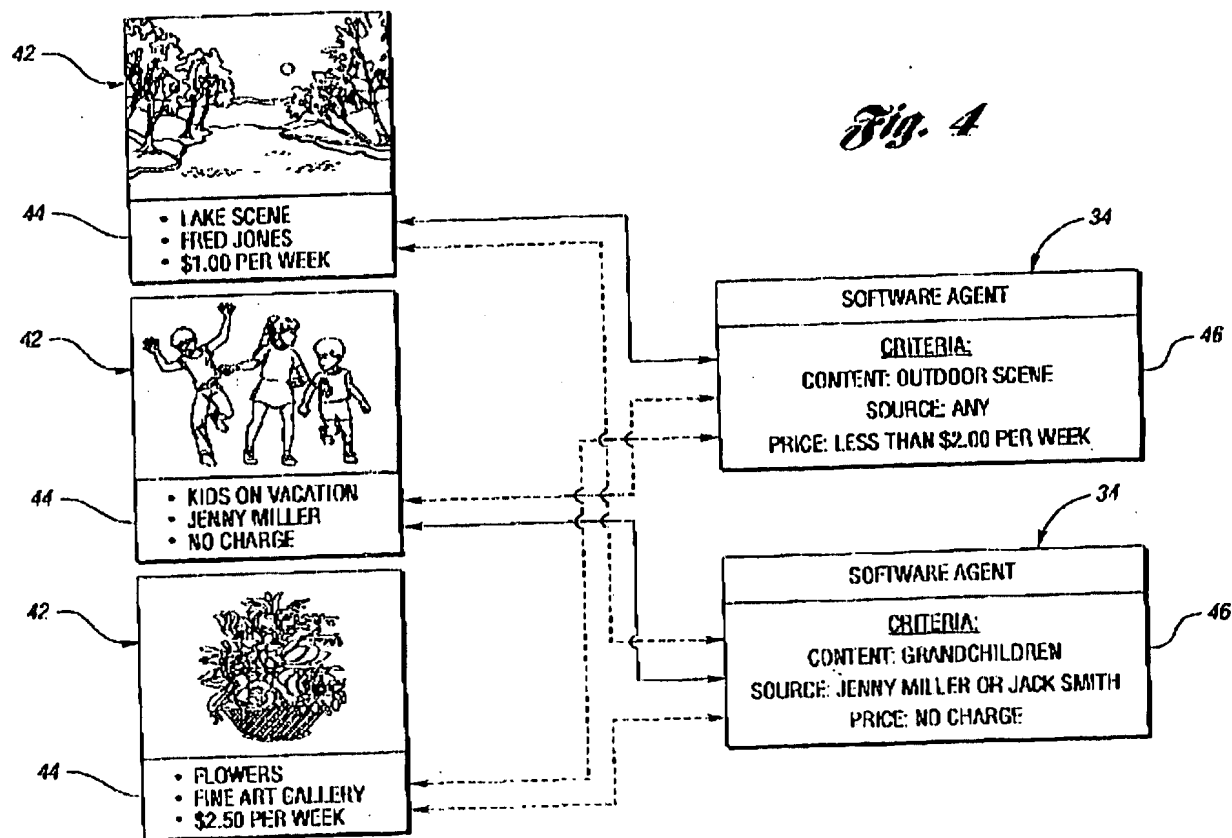
source date, and/or description of the photograph, or even an accompanying recorded voice-over. Metadata could be added to digital images 42 by the source photographer or a gallery, or might be generated automatically by image analysis software at image server 22 or other locations."

The term source appears for the final time on page 7, lines 4-6:

"As described above, software agents 34 can specify content, source, price, schedules, or any other selection criteria for digital images 42."

It should be apparent from Appellant's specification that source metadata is merely one form of metadata that may be used to select images and is certainly not limiting or special in the way it is used or searched.

Source is mentioned again in Fig. 4 shown below. Here it is interpreted that source is meant to be either a photographer/user or a person within the photo, most likely the photographer/user. In either case Savitzky discloses Camera IDs and User IDs as assigned metadata as discussed above (column 4, lines 7-20).



Source metadata is recited in the claim as the preferred metadata for selecting images. However it should be clear that it is only one of many different forms of metadata typically used in the art to search or select desired images. Let it be clear that Appellant's application is not relied upon to teach that source metadata may be used to select images. Any and all metadata attached to image data files are well known in the art to be used to categorize and characterize image data files. The only reason to attach metadata to any form of data is to describe that data. Once metadata is associated with data, that metadata can be looked to in order to characterize,

categorize, search or select said data. Neither Appellant's specification nor impermissible hindsight is needed by one of any skill in the art to make this assertion.

Summary of Savitzky

Savitzky discloses a system that automatically stores images from an image capture device at a server and then creates HTML pages which are made available as web pages where images are presented with optional captions or titles (column 1, lines column 1, lines 45-56). Savitzky teaches that *"in a specific embodiment of an image server, the images stored thereon are also searchable by text (i.e., from the captions or titles) or by image features*. When the images are transferred from the image capture device to the server, several kinds of metadata are attached to the image files including "camera ID, date of capture, and the like" (column 1, line 50) as well as "a card identifier and camera identifier, either of which can be used as a user identifier" (column 4, lines 7-10). Savitzky teaches that this is important because "that way, a kiosk system located in a public place...can be used by anyone...to automatically upload and serve images shortly after capture." It should be noted here that Savitsky seeks to allow uploading of images from remote locations while maintaining the identity of the user or a source of the images. Savitzky further states "In addition to the card and camera identifiers, other information can be added to the image files, such as the time of day and/or location of the kiosk." Savitsky even suggests GPS locations gathered from the camera or the kiosk can be added to the image files. It should be clear that Savitzky explicitly discloses multiple forms of metadata many of which are interpreted as an image

"source." Camera ID, User ID, Card ID, Kiosk ID are all interpreted as "sources." There is no question that Savitzky explicitly discloses creating a database of images at a server with many forms of ample identifying metadata. Why would one need so much metadata in order to store images in database? The only reasonable conclusion is that the inventor seeks to categorize the image files.

What does Savitzky do with the image files once they are uploaded? Savitzky explicitly teaches "*in a specific embodiment of an image server, the images stored thereon are also searchable by text (i.e., from the captions or titles) or by image features*" (Column 1, lines 57-59). Now this feature of searching the images is interpreted as the claimed feature of selecting images according to user-specified criteria which is compared with metadata of the images at the server. Savitzky allows searching of the images by text. Savitzky gives examples of text as captions or titles suggesting that other text found associated with the image files may also be searched. One of ordinary skill in the art would reasonably conclude that text of the other available metadata including all of the examples of source discussed above would also be searched. In addition Savitzky also teaches that "image features" may also be searched. Surely one of ordinary skill in the art would reason that image features would include the metadata comprising all of the examples of source discussed above.

No hindsight is required to conclude that the searching of metadata, comprising but not limited to, text, captions, titles, and image features explicitly taught by Savitzky (column 1, lines 57-59) and the copious amount of source type metadata explicitly

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taught to be gathered and stored with the images files including source data, such as Camera ID, User ID, Card ID, Kiosk ID (column 4, lines 9-20) are related. Why would Savitzky enable all of that metadata to be stored and only enable some of it to be searched? The only sight needed to conclude that the source metadata taught by Savitzky is that of one of ordinary skill in the art. Anyone in the computer arts would realize that any and all metadata may be searched in a file database.

Response to Particular Arguments

Appellant argues, on page 7 of the Appeal brief, the following:

Therefore, the Examiner's position is that it is reasonable to assume that any metadata associated with an image is also used as criteria by which the images are searchable, and that the only reason any data is associated with an image is so it can later be searched. Appellant respectfully disagree. Just because information is associated with a digital image as metadata does not indicate that a system would be designed to use that information as search criteria.

(response) Examiner disagrees. Savitzky explicitly teaches a system capable of performing searching by text and lists examples of text as captions or titles and also enables searching by image features. It is clear that the system of Savitzky explicitly teaches searching by multiple forms of metadata. Savitzky further explicitly teaches multiple forms of source metadata such as camera ID, user ID, GPS location info, and

card ID. It is not unreasonable to assume that such source identifiers will be strings of text. A user ID might be "Jenny Miller" as it is in the Appellants disclosure on Fig. 4, cited as an example only. GPS location might be the name of a city spelled in text. It is more than reasonable to assume Savitzky's invention enables searching all kinds of text indeed that is what is implied when he lists examples such as captions or titles.

Furthermore Savitzky explicitly teaches searching by "image features." Savitzky also explicitly teaches source metadata. Surely this source metadata constitutes image features. In the case of Savitzky the it is certainly more than reasonable to assume only that the collection of source metadata and the searching of text metadata would result in the searching of text source metadata.

Appellants further argue on page 7 of the appeal brief:

Indeed Savitzky discloses multiple pieces of information (e.g., camera ID, date of capture, GPS location) which are associated with the digital image as metadata, yet Savitzky only discloses or suggesst the desire or capability to search captions or titles of digital images as described above.

(response) Examiner disagrees with this statement. Savtzky discloses the desire and capability to search much more than just captions and titles. Savitzky teaches that the images are "searchable by text (i.e., from the captions or titles) or by image features." It is clear form the language of Savitzky that captions and titles are only two examples of the types of text to be searched. This means that more forms of

text are also searched indeed inferring that any text associated with the images may be searched. It is clear that Savitzky discloses that other text is associated with the images such as user ID, GPS location etc. Furthermore Savitzky explicitly teaches searching on text or "image features." Given Savitzky's disclosure of source metadata, this implies that image features would include such data.

Given the lack of disclosure by Savitzky, Appellants disagree with the Examiner's assertion reproduced above that "surely both text and image features used for searching image data must be fairly interpreted as the source information." Appellants submit that the Examiner is impermissibly using hindsight from Appellants' disclosure to assume that camera ID or like information saved as metadata by Savitzky is also utilized as user-specified criteria for searching and selecting digital images as claimed by Appellants.

(response) Examiner submits that Savitzky implicitly discloses a searchable database of images with all kinds of searchable metadata including the source information discussed. Examiner submits that the logical conclusion that Savitzky enables searching source data is more than reasonable to one of ordinary skill in the art. One of ordinary skill in the art would certainly never reach the conclusion that Savitzky does not intend to search images using the many forms of intentionally collected source metadata.

Appellant's arguments with regard to the combination of Savitzky and Mathias are directed to the alleged deficiency of Savtizky. The rejection of claims 9 and 11-12 in view of Savitzky, Mathias and Shiota rely on the arguments presented above. The rejection of claims 24-25, 26-27 and 28-29 and 11-12 in view of Savitzky, Mathias and Zhang rely on the arguments presented above.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

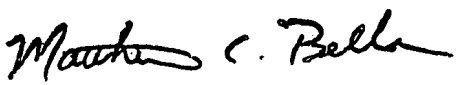

Wes Tucker

Conferees:

Jingge Wu


JINGGE WU
SUPERVISORY PATENT EXAMINER

Matt Bella


MATTHEW C. BELLA
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2600